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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 27 2012

Attorneys for Montezuma Rimrock Water Company, LLC

DOCKETED BY

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE

DOCKET NO. W-04254A-08-0361

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
FINANCING APPLICATION

DOCKET NO. W-04254A-08-0362

LEGAL BRIEF

In accordance with the Procedural Order dated April 9, 2012, Montezuma Rimrock Water Company, LLC ("MWC" or "Company") files the following legal brief. In that order, the Administrative Law Judge requested briefs on three issues: (1) whether the previously filed Water Services Agreement between the Company and Ms. Olsen dated March 16, 2012, the Terms and Conditions of Lease between Ms. Olsen and Nile River Leasing dated March 16, 2012 and the Contract for Arsenic Treatment System between Ms. Olsen and Kevlor Design Group dated February 28, 2012 are lease agreements; (2) whether this docket should remain open for consideration of whether to modify Decision No. 73317 and (3) whether an evidentiary hearing is necessary. MWC addresses these issues below.

On these issues, it bears emphasis that the three agreements at issue speak for themselves and their terms and conditions answer the questions as to the legal nature of the agreements. To start, Ms. Olsen has entered a contract for construction and

1 installation of an arsenic treatment facility with Kevlor Design Group. That contract is
2 strictly between Ms. Olsen and Kevlor, neither of which are public service corporations
3 subject to jurisdiction of the Arizona Corporation Commission. Thus, no approval of the
4 Corporation Commission is required as to that agreement.

5 The second agreement is a lease between Ms. Olsen and Nile River Leasing.
6 Again, that agreement is strictly between Ms. Olsen and Nile River Leasing, neither of
7 which are public service corporations subject to jurisdiction of the Arizona Corporation
8 Commission. Again, no approval of the Corporation Commission is required as to that
9 lease agreement. By its terms, that agreement clearly is a lease by which Ms. Olsen is
10 leasing certain arsenic equipment to be used by the Company in providing water service
11 to customers and to address the arsenic issues.

12 Last, the Water Services Agreement is an operational agreement between Ms.
13 Olsen and the Company whereby Ms. Olsen has agreed to construct, install and maintain
14 the arsenic treatment facilities and the Company has agreed to pay for use of those
15 facilities. This Agreement is an operational agreement and is not an issuance of
16 indebtedness that requires approval under Ariz. Rev. Stat. § 40-301, *et. seq.* The
17 Agreement does not contain any debt or financing terms and, on its face and the plain
18 wording, it is an agreement for arsenic treatment services.

19 Under the Water Services Agreements, the Company pays for arsenic treatment at
20 the specified rates. The Company need not seek or obtain Commission approval prior to
21 entering that Agreement and Commission Staff is aware of the Agreement. To the extent
22 there are any issues with the rates and charges, those rates and charges can be addressed
23 in MWC's next rate case before the Commission. At the end of the term of the
24 Agreement, the Company has an option to purchase the arsenic facilities for \$1.00. That
25 Agreement simply is not a capital financing agreement. Rather, it is a service agreement
26 with an option to purchase. That type of agreement clearly falls within the category of an

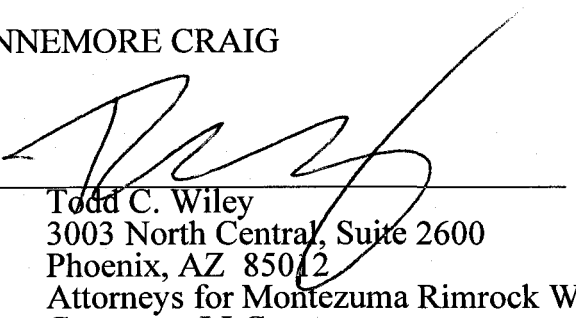
1 operational agreement and does not require any Commission approval. As a practical
2 matter, this Agreement also is a reasonable solution to the arsenic treatment issues facing
3 the Company and its customers. It simply is not in the Company's or the public's interest
4 to further delay resolution of the arsenic issues.

5 Decision No. 73317 originally authorized MWC to seek WIFA financing for
6 arsenic treatment facilities. On January 23, 2011, MWC requested that Decision No.
7 71317 be reopened to allow MWC to obtain approval to seek private financing for such
8 arsenic treatment facilities. In accordance with the agreements noted above, MWC no
9 longer is seeking private financing and Corporation Commission approval of such
10 financing is no longer necessary. Under these circumstances, the Company proposes that
11 this docket be closed and that MWC be allowed to proceed with the operational
12 agreements for installation and use of the proposed arsenic facilities.

13 RESPECTFULLY SUBMITTED this 27th day of April, 2012.

14 FENNEMORE CRAIG

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20 ORIGINAL and 13 copies
21 of the foregoing was filed
22 this 27th day of April, 2012 with:

23 Docket Control
24 Arizona Corporation Commission
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2 was hand-delivered this 27th
3 day of April, 2012, to:

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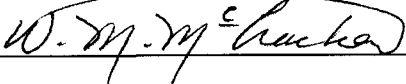
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